

**ENTERED**

November 15, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

JOSE SALVADOR FLORES, JR.,

Plaintiff,

VS.

OMAR LUCIO, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:21-CV-003

**ORDER**

Plaintiff Jose Salvador Flores, a state prisoner proceeding pro se, brings a federal civil rights action against former Cameron County Sheriff Omar Lucio and numerous defendants who worked at Carrizales-Rucker Detention Center during the relevant time period, alleging that several of these individuals physically assaulted him, in violation of his constitutional rights. (Complaint, Doc. 1) Based on his conduct during the same incident as the alleged physical assault, Flores was convicted of assaulting a public servant and sentenced to five years imprisonment. *State of Texas v. Flores*, No. 2019-DCR-01031 (138th Dist. Ct., Cameron County, Tex. Mar. 10, 2020).

In January 2021, the Magistrate Judge issued a Report and Recommendation, recommending that Flores's claims be dismissed with prejudice until the *Heck* conditions are met because Flores's Complaint raises issues that would necessarily undermine the related criminal conviction. (R&R, Doc. 20 (citing *Heck v. Humphrey*, 512 U.S. 477 (1994)))

In April 2021, the Court remanded the matter to the Magistrate Judge to obtain the relevant medical and disciplinary records and consider Flores's claims in light of the principle articulated in *Aucoin v. Cupil* that when considering whether *Heck* precludes a prisoner's Section 1983 action, a court may "examine the prison disciplinary records to understand the basis of the underlying conviction." (Order, Doc. 24 (citing *Aucoin*, 958 F.3d 379, 381 (5th Cir. 2020)))

In June 2021, the Magistrate Judge issued an Amended Report and Recommendation (Doc. 35), again recommending that Flores's claims be dismissed with prejudice until Flores's underlying criminal conviction has been vacated.

Flores did not file any objections to the Amended Report and Recommendation, despite being granted extensions of time to do so. In his motions requesting the extensions (Motion, Doc. 42; Motion, Doc. 43), he contested some of the factual statements within the Amended Report and Recommendation. In an abundance of caution, the Court will consider those challenges as objections and conduct a *de novo* review as to the challenged portions of the Amended Report and Recommendation.

In his motions to the Court, Flores states that “everything they are contradicting me about is a lie”, that “he never touched the officer”, and that he was handcuffed while several officers knocked him to the ground and beat him. (Translated Motion, Doc. 42-1, 1) He urges the Court to review the video evidence to see that his factual allegations are an accurate description of the incident. (*Id.*)<sup>1</sup>

The Court has reviewed the relevant portions of the record, including the video of the event at issue. The Court agrees with the findings in the Amended Report and Recommendation that “[t]he video shows Flores actively resisting throughout the encounter, including pulling away from officers, refusing to be handcuffed and headbutting Ortiz.” (Amended R&R, Doc. 35, 5) No temporal or conceptual distinction exists between his civil claim and the facts underlying his conviction.

As a result, the Court **OVERRULES** Flores's objections and **ADOPTS** the Amended Report and Recommendation (Doc. 35). It is:


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<sup>1</sup> Flores also states that in connection with the underlying conviction, he pled guilty to assaulting a public servant “out of fear and under threats from Judge Arturo Cisneros Nelson” and that he “never touched the officer.” (*Id.*) This argument is beyond the scope of Flores's current lawsuit

**ORDERED** that all causes of action by Jose Salvador Flores's are **DISMISSED WITH PREJUDICE** to their being asserted again until the *Heck* conditions are met.

The Clerk of Court is directed to close this matter.

Signed on November 15, 2021.

  
Fernando Rodriguez, Jr.  
United States District Judge